



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1459
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,742	10/17/2003	Yixin Diao	YOR920030504US1	2816
7590 12/05/2008 Ryan, Mason & Lewis, LLP 90 Forest Avenue Locust Valley, NY 11560				
EXAMINER ZHE, MENG YAO				
ART UNIT		PAPER NUMBER		
2195				
MAIL DATE		DELIVERY MODE		
12/05/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/688,742

Applicant(s)

DIAO ET AL.

Examiner

MENG YAO ZHE

Art Unit

2195

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date: _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-28 are presented for examination.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6, 8-9, 12-13, 15-20, 22, 24, 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abbott et al., Patent No. 6,314,463 (hereafter Abbott) in view of Velline et al., Pub No. 2003/0208559 (hereafter Velline).
4. Abbott was cited in the previous office action.
5. As per claims 1, 17, 27, 28, Abbott teaches a method of using a closed loop system to generically control one or more resources associated with at least one computing system, comprising the steps of:

Obtaining one or more performance metrics and one or more configurations of the one or more resources and evaluating one or more generically-expressed performance metrics associated with the one or more resources given one or more

generically-expressed configurations of the one or more resources (Abstract, lines 1-6; Column 6, lines 66-Column 7, line 5; Column 11, lines 13-20, lines 45-60);

causing a change in the one or more generically-expressed configurations of the one or more resources based on the performance metric evaluating step (Column 14, lines 49-54; Column 7, lines 39-64);

updating the one or more resources with the one or more resource specific configurations (Column 17, lines 50-54).

Abbott does not specifically teach translating one or more performance metrics and one or more configurations from an associated resource specific format to a generic format such that each of the one or more resources are generically controlled, wherein a generic format comprises a common format and generically controlling the one or more resources comprises controlling the one or more resources in accordance with the common format; translating the one or more changed configurations from the generic format to the associated resource specific format; updating the changed configurations in the associated resource specific format; and wherein the one or more configurations of the one or more resources are optimized in a closed loop system formed via a combination of the first translating, evaluating, change causing, second translating and updating steps.

However Velline teaches a conversion engine that can translate one or more performance metrics and one or more configurations from an associated resource specific format to a generic format such that each of the one or more resources are

generically controlled wherein a generic format comprises a common format and generically controlling the one or more resources comprises controlling the one or more resources in accordance with the common format (Fig 7, steps 706, 710; Abstract, lines 7-9); translate the one or more changed configurations from the generic format to the associated resource specific format (Fig 7, step 714); and updating the changed configurations in the associated resource specific format; for the purpose of communication among systems that each uses a different communication format (Fig 7, step 716) for the purpose of exchanging data among different systems.

It would have been obvious for one having ordinary skill in the art at the time of the applicant's invention to modify the teachings of Abbott, where resource managers and resources have the ability to communicate amongst one another and resources managers have the ability to make performance optimization and configuration decisions based on metrics sent to it from the resources themselves, with in the specific instance where the resources and the manager each uses a different communication protocol or format, a conversion engine may be used to translate one or more performance metrics and one or more configurations from an associated resource specific format to a generic format such that each of the one or more resources are generically controlled wherein a generic format comprises a common format and generically controlling the one or more resources comprises controlling the one or more resources in accordance with the common format and translating the one or more changed configurations from the generic format to the associated resource specific format, as taught by Velline, such that a closed loop system is formed so that there may

be translating, evaluating, change causing, second translating, and updating, because it allows for the exchange of data among different systems.

6. As per claims 2, 18, Abbott teaches wherein the one or more resources are at least one of real resources and virtual resources (Abstract, lines 1-3).

7. As per claims 3, 19, Abbott teaches wherein the step of evaluating the one or more generically-expressed performance metrics further comprises determining whether one or more performance goals are being met based on the one or more generically-expressed performance metrics (Column 3, lines 4-10; Column 17, lines 65-67).

8. As per claims 4, 20, Abbott teaches the step of obtaining the one or more generically-expressed performance metrics from a probe (Column 11, lines 45-47).

9. As per claim 5, Abbott teaches wherein the probe measures performance of the one or more resources in the context of a particular workload (Column 11, lines 46-54).

10. As per claim 6, Abbott teaches wherein the particular workload is a current workload (Column 11, lines 46-50).

11. As per claims 8, 22, Abbott teaches further comprising the step of obtaining the one or more generically-expressed configurations associated with the one or more resources prior to changing a configuration (Column 17, lines 22-27, lines 50-54).

12. As per claim 9, Abbott teaches the step of categorizing the one or more obtained, generically-expressed configurations (Tables 1-2 in columns 11-12).

13. As per claim 12, Abbott teaches wherein the model building step further comprises obtaining performance samples associated with the one or more resources and their one or more current configurations (Column 11, lines 13-17, 46-55).

14. As per claims 13, 24, Abbott teaches wherein the step of causing a change in the one or more generically-expressed configurations further comprises instructing the one or more resources to change one or more configurations associated therewith (Column 17, lines 50-54).

15. As per claims 15, 26, Velline teaches wherein the one or more performance metrics and the one or more configurations are expressed in generic formats in accordance with one or more common generic interfaces (Abstract, lines4-9).

16. As per claim 16, Velline teaches wherein a common generic interface comprises a Common Interface Model (Para 58).

17. Claims 7, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abbott et al., Patent No. 6,314,463 (hereafter Abbott) in view of Velline et al., Pub No. 2003/0208559 (hereafter Velline) further in view of Van Duyne et al., Patent No. 6,859,784 (hereafter Van).

18. As per claims 7, 21, Abbott in view of Velline does not specifically teach the step of obtaining the one or more generically-expressed performance metrics via one or more measurements of at least a part of an end user performance experience.

However, Van teaches obtaining one or more measurements of an end user performance experience for the purpose of improving user experience in future use (Column 10, lines 1-5).

It would have been obvious to one having ordinary skill in the art at the time of the applicant's invention modify the teachings of Abbott in view of Velline with obtaining

one or more measurements of an end user performance experience, as taught by Velline, because it can help to improve user experience in the future.

19. Claims 10, 11, 14, 23, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abbott et al., Patent No. 6,314,463 (hereafter Abbott) in view of Velline et al., Pub No. 2003/0208559 (hereafter Velline) further in view of Freund, Patent No. 6,076,174 (hereafter Freund).

20. Freund was cited in the last office action.

21. As per claims 10, 23, Abbott in view of Velline does not specifically teach wherein the step of causing a change in the one or more generically-expressed configurations further comprises building a model for use in determining changes in the one or more generically-expressed configurations.

However, Freund teaches wherein the step of causing a change in the one or more generically-expressed configurations further comprises building a model for use in determining changes in the one or more generically-expressed configurations for the purpose of helping to better determine and fine tune resource allocation schedules (Column 3, lines 38-48; Column 4, lines 1-7).

It would have been obvious to one having ordinary skill in the art at the time of the applicant's invention to modify the teachings of Abbott in view of Velline with the

step of causing a change in the one or more generically-expressed configurations further comprises building a model for use in determining changes in the one or more generically-expressed configurations, as taught by Freund, because it helps to better determine and fine tune resource allocation schedules.

22. As per claim 11, Freund teaches wherein the model building step comprises using at least one of a previous performance history and a previous configuration (Column 3, lines 22-33; Column 4, lines 8-15; Column 5, lines 20-26).

23. As per claims 14, 25, Freund teaches the step of storing the one or more changed, generically-expressed configurations (Column 3, lines 7-9, lines 21-28).

Response to Arguments

24. Applicant's arguments with respect to claims 1-28 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

25. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MENGYAO ZHE whose telephone number is (571)272-6946. The examiner can normally be reached on Monday Through Friday, 7:30 - 5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on 571-272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Meng-Ai An/
Supervisory Patent Examiner, Art Unit 2195